IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4056 OF 2007

Bharati Niwas Coop.Housing
Society Ltd. .. Petitioner

Versus

Pandurang Gopal Dongre & Anr. .. Respondents

Mr.R.V.Govilkar for petitioner
Mr.Vineet Naik for respondent No.2.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 12th July 2007.

P.C.

. Heard Mr.Govilkar for petitioners and Mr.Naik for respondents.

2. Respondents original disputants have filed dispute being Dispute No.214 of 2000 in Coop.Court, Pune.

3. They filed an application for amendment of the dispute which application has been allowed by the Coop.Court and that order is confirmed in revision by the Maharashtra State Coop.Appellate Court, Pune in Revision No.126 of 2006.

4. Petitioner, original opponent to the said dispute is before me challenging this order under Article 227 of Constitution of India.

5. Mr.Govilkar submits that the amendment application essentially is to espouse the cause of disputant No.2 who is a contractor/agent of original disputant No.1 and thus his claim for damages on account of his reputation being tarnished would not lie in the Coop.Court. His

remedy to claim such relief lies elsewhere.

6. Second submission is that Coop.Court has allowed an amendment by which the original dispute gets converted into a claim for damages and that too a relief personal to disputant No.2. That would change the cause of action and, therefore, the amendments could not have been granted.

7. It is not possible to accede to these submissions inasmuch as, it is fairly well settled that an amendment which ousts jurisdiction of the Court can also be allowed. In the instant case by merely allowing the amendment the pleas regarding lack of Jurisdiction of the Coop.Court cannot be said to be taken away. Such a plea can be raised despite amendment being allowed and it would be open for the petitioner to urge that the Coop.Court has no jurisdiction to entertain and try the subject

claim. There is no substance in the other contention that the amendment could not have been granted as the cause of action undergoes a change. There are certain events which have taken place consequent upon dispute being instituted and which have been highlighted. By this course, the disputant becomes entitled to certain reliefs and that is how the amendments are moved. By grant of amendments neither the rival pleas are adjudicated upon nor a final conclusion is reached. It is open for the petitioners to urge that even if the Coop.Court has jurisdiction, such claim cannot be granted. All such pleas of both sides are intact and cannot be said to be affected by the impugned orders.

8. In the light of the settled principles that have been applied by the courts below, to my mind the orders do not call for any interference under Article 227 of the Constitution. More so,

when they are not demonstrated to be vitiated by an error apparent or can be termed as perverse. The petition is dismissed.

9. Needless to state that observations of the trial court and revisional court that all amendments are to be allowed as a matter of rule does not in any manner prevent petitioner from raising appropriate contentions as these observations have been made at the stage of considering the amendment application and their effect and operation is restricted to the same. They shall not influence outcome of the case in any manner. All issues including that of jurisdiction would be decided uninfluenced by any observations in the impugned order.

(S.C.DHARMADHIKARI, J)